that in order to give the word "draft" any meaning at all it must be held to include instruments payable at a future date. See WORDS AND PHRASES, p. 2195; *Hinneman* v. *Rosenbach,* 39 N. Y. S. 98. In the principal case the court decided that a post-dated check was not within the statute because they regarded the statute as being in essence directed against false pretenses, and that a post-dated check merely implied a promise to have sufficient funds in the future. Accord, *State* v. *Ferris,* 171 Ind. 562. But the same court has applied the same reasoning to a check which was not post-dated. *Maxey* v. *State,* 85 Ark. 499; *State* v. *Foxton,* 166 Ia. 181, Ann. Cas. 1916E, 727, *contra;* and if the Arkansas court applies the doctrine of the *Maxey* case, *supra,* to situations arising under the statute, it is difficult to see just what cases the statute will be held to cover.

DAMAGES—BREACH OF CONTRACT WHERE THERE IS NO MARKET FOR THE ARTICLE.—A contracted to deliver to B certain shavings for a specified period at a certain price. There was no established market for such shavings, but B resold some of them to an established customer. After a misunderstanding A repudiated his contract, stopped delivering to B, and thereafter sold the shavings to third parties. In a suit by B for breach of contract, it was *held* that the measure of damages should be based on the difference between the price B paid A and the price B received from his established customer, and not on the basis of the price A received in his new sales after repudiation. *Kennon* v. *Brooks-Scanlon Co.* (La., 1920), 86 So. 675.

The general rule in cases where the article contracted for has no market value is that where the seller contracts to furnish such goods and the buyer resells the goods furnished him, the measure of damages is the difference between the price the buyer was to pay the seller and the price he was to receive in his resales. *France* v. *Gaudet,* L. R., Q. B. 199; *Trigg* v. *Clay,* 88 Va. 330, 13 S. E. 434. The principal case sanctions this rule, but adds a new point. It says that even though the vendor, after wrongfully breaking his contract, by new sales to third parties establishes a market for the article sold, the measure of damages shall still remain the same. It holds that the disappointed vendee should not have the benefit of the vendor's new sales. Although it may seem that such a doctrine allows the vendor to profit by his wrongful breach of contract, on a strict analysis of the true theory of damages the rule seems reasonable and just. Damages should compensate for injuries suffered, and their amount should be established with reasonable certainty. *Brown* v. *Producers' Oil Co.,* 134 La. 672, 64 So. 674. There is no certainty that the vendee could have established the market the vendor succeeded in establishing by his new sales. The vendor's superior salesmanship or facilities may have gotten for him the higher price. What is certain, though, is that the vendee could get the price he did get from his established customer, and this should be the basis of the measure of damages.

DAMAGES—FLUCTUATING EXCHANGE.—A collision occurred between two British vessels in New York harbor, and suit therefor was brought in that

district, but repairs were made in England and paid for in English pounds, and demurrage was also computed by agreement in that money. In reducing such sums to American money for the purposes of the decree, it was *held* that the rate of exchange applicable was that of January 1, 1916, the date upon which the damages were ascertainable, and not the rate prevailing at the time of the final decree. *The Verdi* (April 3, 1920), 268 Fed. 908.

On May 4, 1915, in Paris, France, defendant had delivered to the plaintiff certain notes, due August 4, 1915. Suit was brought on these notes in New York on May 21, 1920, and judgment was entered against the defendant on November 16, 1920. *Held,* "the notes became payable in dollars upon plaintiff's demanding of the defendant their payment in this state. The commencement of the action was equivalent to such a demand. The amount due in dollars depended upon the rate of exchange existing at the time of the demand, or, in this case, the commencement of the action." *Revillon* v. *Demme* (December 22, 1920), 185 N. Y. S. 443.

It will be observed that in both the above cases, the one in tort, the other for breach of contract, the American courts have followed the latest decision of the English court on this point. See *Di Ferdinando* v. *Simon Smits & Co., Limited,* [1920] 3 K. B. 409; noted in 36 HARV. L. REV. 422; also 37 LAW QUART. REV. 38-45. All these decisions are based on the fundamental rule of damage that the amount of recovery should be reckoned at the time and place when and where the sum due first becomes liquidated, and it seems somewhat surprising that there should have been so much litigation of the point. The earlier cases in America said "the value must be fixed according to the rate of exchange at the time of the trial." *Lee* v. *Willcocks,* 5 Serg. and Rawle (Pa.) 48 (1819); see also, *Marburg* v. *Marburg,* 26 Md. 8 (1866). As Story also had said that the plaintiff "is entitled to have an amount equal to what he must pay in order to remit" to the foreign country (CONFLICT OF LAWS, § 310), the view that the rate of exchange should be reckoned at the time of the trial and not at the time of liquidation seemed to have attained almost the dignity of an "American Rule" on the point, and it was not until the decision in the *Di Ferdinando Case, supra,* that the matter was definitely settled in England. The court in the last mentioned case said "fluctuations in the value of the goods which ought to have been delivered are too remote as a consequence of the original breach." So also we must exclude "subsequent changes in the value of the currency after the date of the breach." Confusion would be avoided if we would keep in mind the statement in *The Verdi* case, *supra,* that we are always trying to find the "equivalent in dollars" at the time and place where the damages were ascertainable, and this, too, whether the suit is for the breach of a contract or in tort, for a conversion or trespass. If we reckon the value at the time of the trial we violate our basic rule of computation, for though we thus take the *place* of liquidation we do not take the *time* of liquidation, but depart from it. It should be noted that in both the instant cases and in the English case of *Di Ferdinando* v. *Simon Smits & Co., Limited, supra,* this rule benefits the

plaintiff, because the rate of exchange was changing in favor of the country in which the suit was brought. It may well be inquired whether the courts would stand by the rule if the converse of this were true, so that the verdict would be less favorable to the plaintiff. If the New York court and the United States court should stick to the rule, they would apparently be out of harmony with the theory of the New York court in *Baker* v. *Drake*, 53 N. Y. 211 (1873), as to the measure of compensation in case of conversion of stocks of fluctuating value, the rule which was afterward adopted by the United States court in *Galligher* v. *Jones*, 129 U. S. 193 (1888). But whatever may be said about consistency—if we may assume that the courts of last resort in New York and in the United States will uphold their subordinate courts—we seem at last to have reached a uniform rule in England and in America, and as this solution seems not only to be in accord with justice but also not out of harmony with the fundamental theories of proper legal compensation, we may assume that our law on this point is finally settled.

DIVORCE—FOREIGN DECREE, GRANTING HUSBAND DIVORCE, A BAR TO WIFE'S SUIT TO RECOVER SUMS FOR NECESSARIES.—A wife brought an action against her husband in New York to recover from him the sums which she claimed to have spent out of her separate estate, in discharge of his obligation to provide her with the necessaries of life suitable to her condition. While this action was pending the husband began an action in Nevada against the wife for divorce on the ground of extreme cruelty. She appeared and defended the action, denying the allegations of the complaint, and setting up abandonment and non-support as a defense. The Nevada court entered a final decree in favor of the husband, dissolving the marriage. He thereupon served a supplemental answer in the action pending in New York, setting up the Nevada decree as a bar. *Held*, the decree of the Nevada court was a bar to the wife's suit in New York. *Pearson* v. *Pearson* (N. Y., 1920), 129 N. E. 349.

The wife's claim was that her husband abandoned her without making any provision for her support, and therefore all expenditures for necessaries made by her during the period of abandonment should be repaid to her by her husband. On the other hand, her husband claimed that he was justified in leaving her upon her own resources during all the period for which she is claiming compensation, because of her conduct. The pleadings in the Nevada divorce case presented the question of the right of the husband to abandon his wife during the entire period when the expenditures sued for were made, and this issue was tried and determined in the husband's favor by the decree. The decision in the principal case is therefore sound, because in this case the wife is seeking to re-litigate the very issues decided adversely to her by the Nevada court. This cannot be done under the full faith and credit clause of the Constitution of the United States (Art. 4, Sec. 1). See *Fauntleroy* v. *Lum*, 210 U. S. 230; *Harris* v. *Baek*, 198 U. S. 215; MINOR, CONFLICT OF LAWS, p. 188.